

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petitions:** 45-004-13-1-5-00345-16  
45-004-15-1-5-01821-16  
45-004-17-1-5-00292-19  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel:** 45-08-15-330-001.000-004  
**Assessment Years:** 2013, 2015, 2017

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

**PROCEDURAL HISTORY**

1. Nowacki contested the 2013, 2015, and 2017 assessments of his property located at 2601 Delaware Street in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations valuing the residential property at \$11,200 for 2013, \$11,400 for 2015, and \$5,900 for 2017.
2. Nowacki filed Form 131 petitions with the Board and elected to proceed under our small claims procedures. On June 10, 2019, Ellen Yuhan, our designated Administrative Law Judge (“ALJ”), held a hearing on Nowacki’s petitions. Neither she nor the Board inspected the subject property.
3. Nowacki appeared pro se. Hearing Officers Robert Metz and Joseph E. James represented the Assessor. They were all sworn as witnesses.

**RECORD**

4. The official record contains the following:

Petitioner Exhibit A:	Property record card for 2014-2017
Petitioner Exhibit B:	Property record card for 2013-2015
Petitioner Exhibit C:	GIS map of the subject parcel
5. The official record for this matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; and (3) an audio recording of the hearing.

## BURDEN OF PROOF

6. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I.C. § 6-1.1-15-17.2(b) and (d).
7. Here, the property's value decreased from 2012 to 2013, did not change from 2014 to 2015, and then decreased from 2016 to 2017. Nowacki therefore bears the burden of proof for all of the years under appeal.

## SUMMARY OF CONTENTIONS

8. Nowacki's case:
  - a. The property contains a collapsed structure on an unbuildable 25' lot, and it is located in an area with little potential for future residential development. The structure is partially on the subject lot and partially on an adjacent lot, which Nowacki does not own. In its current condition, the structure has a negative value. *Nowacki testimony; Pet'r Ex. C.*
  - b. Despite having a collapsed structure on an unbuildable lot, this property has a zero influence factor. There are influence factors for vacant lots, for unbuildable lots, and for collapsed structures, and this property should have a 75% or 80% negative influence factor. Nowacki contends the property's assessment is a willful, malicious assessment designed to destroy any possibility of someone owning the property. *Nowacki testimony; Pet'r Exs. A, B.*
  - c. The property has been churning through the system for 30 years. No one is interested in purchasing a property that is assessed at six times its market value. These appeal meetings drag on year after year, and the process deliberately takes advantage of property owners and destroys the city. *Nowacki testimony.*
  - d. Nowacki argues the property's value should not be \$11,400, \$10,900 or even the current value of \$5,900. He thinks the property is worth \$1,200. *Nowacki testimony.*
9. The Assessor's case:
  - a. The Assessor recommends the 2013 and 2015 assessed values be reduced to \$6,100: \$4,100 for land and \$2,000 for improvements. The 2017 assessment should remain \$5,900. *James testimony.*

## ANALYSIS

10. Nowacki failed to make a prima facie case for reducing the property's 2013, 2015, or 2017 assessments. The Board reached this decision for the following reasons:
  - a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. "True tax value" does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines "true tax value" as "market value in use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." MANUAL at 2.
  - b. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are "appropriate for determining true tax value." MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property's true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with the Uniform Standards of Professional Appraisal Practice is the most effective method for rebutting the presumption that an assessment is correct). Regardless of the appraisal method used, a party must relate its evidence to the relevant valuation date. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* For 2013 and 2015, the valuation dates were March 1, 2013 and March 1, 2015, respectively. For 2017, the valuation date was January 1, 2017. Ind. Code § 6-1.1-2-1.5(a).
  - c. Nowacki contends the property's assessments for all years should be \$1,200, but he failed to present any probative market-based evidence to support that value. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
  - d. Nowacki's other contention focused on the Assessor's alleged error in not applying an influence factor. Even if the Assessor erred, however, simply attacking his methodology is insufficient to rebut the presumption that the assessments are correct. *Eckerling*, 841 N.E.2d at 678. To successfully make a case for a lower assessment, a taxpayer must use market-based evidence to "demonstrate that their suggested value accurately reflects the property's true market value-in-use." *Id.*
  - e. Because Nowacki offered no probative market-based evidence to demonstrate the property's correct market value-in-use for 2013, 2015, or 2017, he failed to make a prima facie case for a lower assessment. Where a Petitioner has not supported his

claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003). In this case, however, the Assessor specifically requested that we lower the 2013 and 2015 assessments to \$6,100. We accept the Assessor's concession.

#### **FINAL DETERMINATION**

In accordance with the above findings of fact and conclusions of law, we order the 2013 and 2015 assessments reduced to \$6,100. For 2017, we find for the Assessor and order no change to the subject property's 2017 assessment.

ISSUED: August 29, 2019

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

#### **- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.